



POLICE DEPARTMENT

April 8, 2010

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Damon Martin  
Tax Registry No. 920558  
75 Precinct  
Disciplinary Case No. 83932/08

Police Officer Monte Green  
Tax Registry No. 934330  
Fleet Services Division  
Disciplinary Case No. 83933/08<sup>1</sup>

The above-named members of the Department appeared before the Court on October 20, 2009, and December 1, 2009, charged with the following:

Disciplinary Case No. 83932/08

1. Said Sergeant Damon Martin, assigned to the 73 Precinct, while on-duty on October 18, 2006, at approximately 1440 hours, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: entered the interior of a private residence located at [REDACTED], Kings County, in violation of the Constitutions of the United States and the State of New York, in that Sergeant Martin did not have a warrant, or the consent of the owner, or emergency circumstances to justify the warrantless entry.

P.G. 203-10, Page 1, Paragraph 4 - ABUSE OF AUTHORITY

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<sup>1</sup> Although the accusatory instrument lists Respondent Green's first name as "Monte," he is on file with the Department as Monty Green, and spelled his name with a Y for the record at trial.

Disciplinary Case No. 83933/08

1. Said Police Officer Monte Green, assigned to the 73 Precinct, while on-duty on October 18, 2006, at approximately 1440 hours, did wrongfully abuse his authority as a member of the New York City Police Department, to wit: entered the interior of a private residence located at [REDACTED], Kings County, in violation of the Constitutions of the United States and the State of New York, in that Police Officer Green did not have a warrant, or the consent of the owner, or emergency circumstances to justify the warrantless entry.

P.G. 203-10, Page 1, Paragraph 4 - ABUSE OF AUTHORITY

The Department was represented by Paul Gallagher, Esq., Department Advocate's Office. Respondent Martin was represented by Philip Mellea, Esq., and Respondent Green was represented by Craig Hayes, Esq.

The Respondents, through their counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondents are found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Veronica Johnson and Shirlene Green as witnesses. The Civilian Complaint Review Board (CCRB) interview of [REDACTED] was admitted as Department Exhibit (DX) 1 (tape) and 1a (transcript).

Veronica Johnson

Johnson was 43 years old and was self-employed as a day care provider. On October 18, 2006, she lived at [REDACTED], Brooklyn. Johnson ran her day care from home but on that particular date it was not in session.

Johnson lived in a duplex unit of a semi-attached two-family home. The entrance to the home was an external set of stairs leading from the front of the house to the second floor. Different doors led to each unit. In Johnson's unit, the kitchen and living room were on the second floor and the bedrooms were on the first. Just inside the second level was a set of stairs leading down. There were about fifteen steps in this internal staircase.

On October 18, 2006, at approximately 2:30 p.m., Johnson was in the living room. Johnson testified that she heard Shirlene's voice, "like there was something happened." Johnson then heard footsteps going down the internal staircase. She ran to the front of the home to see what happened. She saw officers coming up the internal stairs holding [REDACTED] by the collar. [REDACTED] was Johnson's godson. Johnson believed he was 17 years old at the time. He did not live with her, but he "occasionally comes over on a regular basis."

Johnson stated that Shirlene was trying to get up from the ground in front of the door after she was knocked down.

Johnson testified that she observed two police officers. Because time had passed since the incident, she did not "remember them so clearly." She stated, however, that one was in uniform and the other was tall and wore a tan shirt. Johnson believed the second officer was wearing a shield because he had a string around his neck. She later saw the shield, which was gold. At trial, Johnson asserted that if she were to "look around now" she would "remember their faces."

Johnson identified Respondent Martin as the officer that had been in uniform. She was unsure if she recognized Respondent Green.

Johnson testified that the officers took [REDACTED] outside and went down the stairs to the sidewalk. The officers handcuffed [REDACTED]. She asserted that neighbors had gathered and were “saying stuff.” Johnson contended that the officer in the tan shirt was “very rude.” She asked what was going to happen to [REDACTED]. The officers wrote Harris a summons for “bike on the sidewalk.” They said that they called out to [REDACTED] but he did not come over. Johnson testified that she asked the officers “why do you guys do this . . . there is so many other things you could be doing instead of arresting this young man doing nothing at this time.”

On cross-examination by counsel for Respondent Green, Johnson testified that [REDACTED] was originally inside her home. She sent him to the store. He had been gone for about five minutes. When [REDACTED] came back to the house, she did not know what he was doing outside right before that. Johnson stated that the door was “cracked” open because she anticipated [REDACTED] returning shortly. She acknowledged, however, that her neighborhood was a high crime area.

Johnson admitted that she knew riding a bicycle on the sidewalk was illegal. In response to counsel’s question if “when someone is doing something illegal and the police officers try to stop them do you consider that harassment,” Johnson replied, “It depends on the extent that they go to.” She did not consider the attempted stop of [REDACTED] for sidewalk bicycle riding to be harassment. However, “the way they were carrying on and the way they had him I think that is a little bit extent . . . because now you have him you went into my home where you had no right to be in.” Johnson believed the officers had a right to chase [REDACTED], but not into her home. She asserted that officers occasionally harassed youths in the area. By harassment, she meant that the good individuals suffered because of what others did wrong.

Johnson could not say which officer grabbed [REDACTED]'s collar but they both were in the stairway.

On cross-examination by Respondent Martin's counsel, Johnson testified that she did not recall whether or not the van Respondent Martin was standing by was a marked vehicle, but remembered that the van was white. She observed a female officer standing in front of the entryway to the residence. Johnson did not see, however, whether the female officer talked to Shirlene. Johnson was told by Shirlene that she had fallen down because one of the officers ran into her.

Shirlene Green

Shirlene Green was a resident of Kings County. She testified that at approximately 2:30 p.m. on October 18, 2006, she was outside on the stoop at Johnson's house, while Johnson was in the living room. She stated that they sent [REDACTED] to a store to buy something for them. [REDACTED] went to the store on a bicycle.

A few minutes later, Shirlene observed that while [REDACTED] was on the sidewalk coming to the house, two officers came out of a van and tried to approach [REDACTED] by shouting to him to stop. Shirlene admitted that she told [REDACTED] not to stop and just keep going inside the house.

Shirlene testified that when [REDACTED] passed by her standing on the stoop, she tried to close the door, but "before he could get in the house two of the cops run after him and he went down the st[e]ps in the house." Shirlene asserted that the officers entered the house and went down the interior staircase. Shirlene fell down because one of the officers pushed her when passing by.

Shirlene testified that a female uniformed officer helped her up and asked if she was injured. Shirlene observed the officers come upstairs with [REDACTED]. One was holding [REDACTED] by

the collar and the other searched him. The searcher said "he was clean he didn't have nothing on him." The officers went out to the van, then returned to give [REDACTED] a "ticket."

Shirlene testified that she observed four police officers, including Police Officer Green, Police Officer Pringle, a plainclothes officer, and a fourth "regular beat cop."

On cross-examination by Respondent Green's counsel, Shirlene testified that because the weather was very nice on that day, she was outside on the stoop and the front door was halfway open. She observed that while [REDACTED] was on the sidewalk on his bicycle, the police officers stopped the van and told him, "come here." Shirlene said that she told [REDACTED] to come inside because "[i]f you want to talk to somebody that is not the way you call them." Shirlene further contended that [REDACTED] was not riding the bicycle because "he had one foot." She asserted that "riding the bike is when you have both feet on the pedal." [REDACTED] "had one foot over the other side so that is not riding a bicycle."

Shirlene alleged that the police frequently harassed kids in the neighborhood by stopping and arresting them. This was another reason she told [REDACTED] to come inside. Although she was standing in front of the house, she did not attempt to stop the officers from going inside because she did not think that they would enter the house without a warrant. Shirlene stated that she had not had prior contacts with any of the police officers.

Shirlene testified that the officers who entered the house searched [REDACTED] inside the living room area. She was at the steps outside with the female officer.

On cross-examination by Respondent Martin's counsel, Shirlene testified that [REDACTED] was initially walking, but after she told him to get inside and the officers charged up the steps, he started to run. Shirlene did not remember which officer specifically knocked her down. One of them "went over" her when she was on the ground.

On examination by the Court, Shirlene testified that the unit attached to Johnson's house was on one's left if one were looking toward the sidewalk from the stoop. At the time of the incident, Shirlene was by the corner of the stoop, looking toward the sidewalk, on the right corner of the stoop from the perspective of facing the sidewalk. When she was hit by one of the officers, she fell to the edge of the doorway where there was a little bump before you put your feet into the doorway.

CCRB Interview of [REDACTED]

[REDACTED] stated that he was born on [REDACTED], and resided at [REDACTED]. He acknowledged that the incident took place at approximately 2:30 p.m. on October 18, 2006, in the vicinity of [REDACTED] in Brooklyn.

[REDACTED] stated that he was at his godmother's house, which was like a second home to him. When asked by the main CCRB investigator who his godmother was, [REDACTED] said, "Ms. V" and that she did not "go by any other names." When prompted by the second investigator, [REDACTED] agreed that her name was Veronica Johnson.

[REDACTED] stated that he left the house to go to the store. On his way back, he was riding a bicycle on the sidewalk. He noticed a police van on the street and did not want to "bump heads" with the police, especially since he had heard stories of them harassing minors.

[REDACTED] stated that a plainclothes officer in the vehicle asked to see [REDACTED]' identification and to come over to the van. [REDACTED] did not comply and instead continued on to Johnson's house. [REDACTED] stated that he did not have any identification on him and that he went into the house to get his ID and to clear everything up. He admitted, however, that he did not communicate to the officers that this was his intention.

[REDACTED] got off the bike when he got to the sidewalk and “started scooting on the side,” which he continued to do until he got to the front of the house. The bike belonged to a man who was helping to do work on Johnson’s house and was too big for him. He was “scooting” by standing on one of the bike’s pedals with his other leg over the bike.

[REDACTED] stated that he was walking when he came into the house and that the van was approximately 15 to 20 feet away from him. His aunt, Shirlene Green, told him to “come around” to “let there be supervision.” [REDACTED] stated that he did what his aunt told him and “came around” because the police vehicle was “charging” at him and he thought that it might pull up on the sidewalk. [REDACTED] did not see the officers get out of the vehicle.

As [REDACTED] came around, he entered the house. An officer came charging in behind him as [REDACTED] was trying to go downstairs in the house. This officer was in plainclothes. [REDACTED] stated that when he “went downstairs in the room, the cop came charging at me.” The officer then “come charging up at [REDACTED] and grabbed” him.

[REDACTED] stated that when he came out of the house, his pants were loose and his “private” was exposed. When [REDACTED] told the officer this, he replied, “maybe you try to hide drugs there. You know you probably do drugs.” [REDACTED] explained to the CCRB investigators that he did not run, and was just trying to get to Shirlene so that an adult could help him. The officer took [REDACTED] outside where people from the community had gathered to watch. [REDACTED] was frisked, and he indicated that he received a summons.

[REDACTED] stated that the officer who knocked over Shirlene was a male uniformed officer. There was not enough room for two people in this “tight space,” and the officer knocked her down. He admitted, however, that he did not actually see this because he was walking

downstairs and calling for Johnson. He heard the rumble of the officers giving chase and then heard a loud "boom" when Green fell down.

[REDACTED] stated that when he was downstairs, "it all happened in seconds." The plainclothes officer was falling down the stairs trying to catch Harris.

[REDACTED] stated that two officers followed [REDACTED] into the house and down the stairs – the uniformed officer first and the plainclothes officer behind him. [REDACTED] commented, however, that when he went downstairs, he turned around and saw the plainclothes officer falling.

[REDACTED] told the investigators that he was not "even fully downstairs" when he called for Johnson; he was heading down to call for her "and they came charging in."

[REDACTED] described both officers as dark-skinned males. There was a third female officer present as well.

The Respondents' Cases

The Respondents called Sergeant Katrina Pringle as a witness, and each testified on his own behalf.

Sergeant Katrina Pringle

On October 18, 2006, Pringle was a police officer assigned to the 73 Precinct. She was working with the Respondents on a conditions team. Pringle was seated in the back seat of the team's marked van. Respondent Martin was the supervisor.

At approximately 2:00 p.m., the officers were driving in the [REDACTED] section of Brooklyn on [REDACTED] Street. They saw a young man riding a bicycle on the sidewalk. Respondent Martin told the man to stop because he wanted to issue him a summons for the sidewalk riding. The man looked at the officers, said a few words, but refused to get off of the bike. The man continued to ride the bike, then dropped it to the ground and began to run.

Pringle stated that Respondent Green ran out of the van and chased the man up the outdoor stairs of an apartment building. Respondent Green caught up to the man and brought him down the stairs. There was a woman at the top of the stairs.

Pringle testified that some people had gathered and were yelling and cursing. One woman stated that she fell. Pringle got out of the van when Respondent Green was bringing the suspect down the stairs.

Pringle testified that she did not see Respondent Green enter the building, and she asserted that neither Respondent "ma[d]e it inside the home." Respondent Martin, who was in uniform, was standing somewhere near Pringle on the sidewalk, while Respondent Green chased the man and then brought him back down the stairs. Pringle did not recall having a conversation

with an "elderly" woman. She did not go up the steps of the building. After Respondent Green brought the suspect down the steps, he frisked him. The man was issued a summons and released.

On cross-examination, Pringle stated that she believed the suspect entered the building. She did not actually see him enter, but when she saw him, he was by the doorway. This was consistent with a passage read by the Advocate from Pringle's CCRB interview, in which she said he ran inside. She agreed with the Advocate that this meant "he passed the doorway." Pringle did not know how long [REDACTED] was inside the residence. She could not see inside and did not remember seeing anyone else come out.

On re-direct examination, Pringle agreed that she was asked the following questions at the CCRB interview and gave the following answers:

Investigator: Was the individual, the young man, was he inside or outside the building, was inside like past the

Pringle: I believe.

Investigator: Door or.

Pringle: He [sic] doorway.

\* \* \*

Investigator: Outside the door.

Pringle: I don't think they were inside I think that doorway.

Investigator: Okay, did you see Green have to reach in at any point in order to grab the individual.

Pringle: No.

Upon examination by the Court, Pringle did not recall if the door to the residence was open or closed when Respondent Green grabbed [REDACTED] and brought him down the stairs.

When Pringle first saw the woman who had complained she fell, the woman was standing up at the top of the stairs. When Respondent Green first grabbed [REDACTED] at the top of the stairs,

Pringle saw a woman there. Pringle did not recall, however, if it was the same woman that complained about falling. Pringle did not recall speaking to the woman who had fallen down.

On re-cross-examination, Pringle stated that when the suspect was apprehended, there was another officer in the vicinity on foot patrol. She believed his name was Yubov and thought he was of Indian ethnicity, or possibly Russian. Yubov issued the summons to the individual because no one else had one.

Respondent Martin

Respondent Martin was currently assigned to the 75 Precinct. On October 18, 2006, he was assigned to the 73 Precinct in a conditions unit. He was working in uniform with Respondent Green and Pringle in a marked van and was in uniform. He was not wearing a brown shirt or anything that was tan in color. He did not recall if he was wearing a jacket.

At approximately 2:00 p.m., the officers were traveling eastbound approaching [REDACTED] Street when they noticed a young man, possibly in his twenties, riding a bicycle on the sidewalk. He was later identified as [REDACTED]. Respondent Martin wanted to stop [REDACTED] possibly to issue him a summons for riding on the sidewalk. Respondent Martin was seated in the front passenger seat and yelled out for [REDACTED] to stop but he refused to comply. [REDACTED] sped up and turned onto [REDACTED] Street, at which point he crossed in front of the van and dropped his bike on the street in front of the [REDACTED] Houses, a private housing complex. [REDACTED] started to run, went up a small flight of stairs, and tried to enter an apartment at the top. This low-rise building was part of [REDACTED].

Respondent Martin ordered Respondent Green to stop [REDACTED]. Respondent Green, who was operating the van, stopped the vehicle and ran after him. Respondent Martin saw that

Respondent Green "had the individual at the top of that staircase." Respondent Martin never saw the suspect actually enter into [REDACTED], but did see him at the doorway, at which time he was stopped by Respondent Green. Respondent Martin noticed that [REDACTED] had knocked a woman down. After Respondent Green left the van, the incident occurred "in a matter of seconds."

When Respondent Martin got out of the van, he was watching Respondent Green come down the stairs with [REDACTED]. Respondent Martin walked to the bottom of the stairs but did not go up the staircase.

Respondent Martin testified that when [REDACTED] was brought to the bottom of the stairs, he was flailing his arms wildly, so he was handcuffed to bring him under control. A warrant check was performed and [REDACTED] was issued a summons. None of the conditions officers had a blank summons, so they got one from another officer, Yakabov, who was on patrol in the area.

Respondent Martin stated that the entire incident took place in a matter of seconds. Respondent Martin spoke to the woman that got knocked down.

Respondent Martin "personally" did not believe that [REDACTED] lived at the location he ran up to. Respondent Martin asserted that in his experience, when people were chased by the police, "they saw open opportunities or open doors just to get away. . . . I was under the impression he was running into some innocent persons – trying to run into some innocent persons location."

Respondent Martin stated that there was a security company that worked at the [REDACTED] Houses. They wore white and blue uniforms and also worked in plainclothes. They often came to the scene of police actions. Respondent Martin did not recall the color of the security guards' badge.

On cross-examination, Respondent Martin agreed that when he first spotted [REDACTED] he did not believe that he was committing anything more than a violation. When [REDACTED] dropped the bicycle and started running, Respondent Martin admitted that this raised his suspicions. Respondent Martin thought [REDACTED] possibly had a weapon or drugs on him, and might have been trying to invade someone else's home.

Upon Respondent Martin's direction, Respondent Green frisked [REDACTED]. Neither Respondent Martin nor Pringle went up the stairs with Respondent Green.

Upon questioning by the Court, Respondent Martin testified that he saw Respondent Green chase [REDACTED] up the stairs. By the time Respondent Martin was out of the van, Respondent Green was walking [REDACTED] down the stairs. Before [REDACTED] knocked the woman over, Respondent Martin did not notice her. The landing at the top of the stairs was no larger than the witness box. The door to the residence was open. During the chase and apprehension of [REDACTED], Respondent Martin was intermittently watching Respondent Green.

Respondent Green

On the date of the incident, Respondent Green was assigned to the 73 Precinct. He was in uniform and working in a conditions unit with Respondent Martin and Pringle in a marked police van. Respondent Green stated that he was the operator of the van.

Respondent Green first saw [REDACTED] after Respondent Martin told him to get off the bicycle. [REDACTED], however, continued to ride faster. He got off the bike and ran in front of the van. Respondent Green put the van in park and ran after [REDACTED]. [REDACTED] was tugging at his pants and Respondent Green thought that he possibly was holding a firearm.

Respondent Green testified that [REDACTED] ran to an apartment at [REDACTED] that was approximately five to eight steps above ground level. At the time that Respondent Green got out of the van, [REDACTED] was approximately seven feet away from the van and on the second step of the staircase. Respondent Green testified that when [REDACTED] got to the top of the stairs, he started banging frantically on the door. [REDACTED] continued to grab at his waist, and Respondent Green still felt that he might have a gun.

Respondent Green stated that when he got to the top of the stairs, a heavy-set woman came to the door as a result of [REDACTED] banging and that [REDACTED] knocked her down when she opened the door. Running into the woman slowed [REDACTED] down, Respondent Green reported. At the time that Respondent Green grabbed [REDACTED], [REDACTED] was at the doorway, and not inside of the house. Respondent Green grabbed [REDACTED] by the waistband to make sure he did not have a weapon.

When Respondent Green caught [REDACTED] the officer was standing on the porch outside of the doorway to the apartment. He testified that he did not "ever have to enter the residence."

[REDACTED] did not comply with Respondent Green's commands to stop moving and was flailing his arms. Respondent Green checked [REDACTED]' waistband for firearms and then brought him downstairs.

When Respondent Green brought [REDACTED] to the bottom of the stairs, he placed him in handcuffs and frisked him for weapons and other contraband. Nothing was found on [REDACTED]. Respondent Green ran a warrant check for [REDACTED] at this time. A person claiming to be his father was one of the people complaining to the officers about what was going on. Respondent Green stated that he did not have any summonses on him at that time. Yakabov came over and actually issued the summons.

Respondent Green commented that “[t]he people in the [REDACTED] community especially some of those [REDACTED] have a habit of not cooperating with the police and they become loud, belligerent, throw things at us.” He testified that several people came outside from other apartments. They were “yelling and cursing and carrying on,” saying that [REDACTED] “didn’t even do anything,” even though they were not outside and did not witness the violation.

On cross-examination, Respondent Green testified that [REDACTED] was wearing a jacket with lots of bulges and pockets. Based on all of his actions, Respondent Green felt that [REDACTED] might have been in possession of a weapon. Respondent Green stated that it was not his intention to apprehend [REDACTED] if he had gone into the house.

When [REDACTED] was apprehended at the top of the stairs, Respondent Martin was at the bottom of the stairs, and Pringle was somewhere on the sidewalk. Respondent Green did not speak to any female non-member.

Upon examination by the Court, Respondent Green stated that he did not recall seeing any private security personnel at the scene.

#### FINDINGS AND ANALYSIS

The Respondents are charged with abuse of authority. The Department alleged that the Respondents “entered the interior of a private residence” to pursue [REDACTED]. The Respondents were on anti-crime duty and observed [REDACTED] riding a bicycle on the sidewalk. This was a violation of Administrative Code § 19-176 (b) and a traffic infraction. The Department argued that no exigent circumstances existed to justify the entry because the offense was non-

criminal, i.e., it was neither a felony nor a misdemeanor, and was non-violent. They did not have a warrant or consent.

The Respondents stated that they never actually entered the dwelling. They asserted that Respondent Green made the arrest on the stoop or landing right before the doorway to the home.

The residence in question belonged to Veronica Johnson, [REDACTED]' godmother. The building was a semi-attached two-family home. Johnson's part of the building was like a reverse duplex. One entered by ascending exterior stairs. Inside, there were stairs to the lower level of the home. Johnson testified that she saw the officers leading [REDACTED] upstairs inside the home. Shirlene Green, Johnson's friend and [REDACTED]' aunt, was standing at the doorway. She said that she got knocked down by one of the officers, and saw them bringing [REDACTED] upstairs, again inside the residence.

The Court does not credit the testimony of the Department witnesses. The witnesses' demeanor at trial was uniformly hostile and abrasive. Their lack of respect for this process and the Court called into question their ability to give accurate testimony about the event. This included interrupting the Court (as well as counsel), and not answering the questions as given. The testimony of Shirlene Green, in particular, is telling. When the officers tried to stop [REDACTED] Shirlene told him to come to the house. She said she did so because she did not like the way the officers spoke to [REDACTED] and because she felt that the police harassed neighborhood youths. If she truly was concerned about police harassment, Shirlene could have remained outside at least as a witness to the encounter. The Court views her comments and reasoning not only as evidence of the witness' bias against the Department, but also as demonstrative of lack of truthfulness.

At trial, Johnson was unable to identify the Respondents accurately. She stated that one of the officers was wearing a uniform, and the other was wearing a tan shirt and a gold shield. She identified Respondent Martin as the one wearing, she believed, a uniform. This would mean Respondent Green had the gold shield. But as a police officer, Respondent Green would have possessed a silver or "white" shield. Although the Respondents both admitted that they were present for the incident, the events happened quickly, so Johnson's inability to distinguish them detracts from her credibility.

The Department also presented the hearsay account of [REDACTED] the individual whom the Respondents pursued. [REDACTED] did come to Police Headquarters on the first day of trial, but did not have identification with him and could not be processed by Headquarters Security. He did not appear for the second day of trial, and his statement to the CCRB was admitted into evidence (see DX 1 & 1a). Although hearsay is admissible in this forum, see Matter of Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991), there are significant reasons for caution in cases like this that present close questions of credibility. [REDACTED]' account was not essential to the Department's case, if only because there were in-court witnesses, Johnson and Shirlene, testifying about the same events. Because it was hearsay, however, counsel for the Respondents were unable to probe, and the Court could not observe, [REDACTED]' demeanor, possible motives to lie, and the credibility of his account after the test of cross-examination.

Moreover, there are serious questions about the credibility of [REDACTED]' account. His reasons for not stopping upon the officers' request were internally inconsistent and did not have the ring of truth. [REDACTED] stated in his CCRB interview that he did not go toward the officers because he wanted to get identification and because he wanted an adult's presence ([REDACTED] was almost 17 years old at the time of the incident). He stated that Shirlene told him to come to the

house so an adult could be there. But Shirlene was already present, watching the encounter. Also, [REDACTED] admitted that rather than simply telling the officers his identification was in Johnson's house and he would need to retrieve it, he kept going on the bicycle. [REDACTED] claimed that he walked, and did not run, to Johnson's house. He also asserted that he was able to get down at least part of the interior staircase before the officers caught him. This does not make sense in light of his testimony that the officers came "charging" into the house. If [REDACTED] was walking, and the officers were running, it is unlikely that [REDACTED] could have gotten as far as he said he did.

Both Respondents testified, and Police Officer Pringle, also part of the anti-crime team, testified on their behalf. These witnesses generally agreed that only Respondent Green went up the outer stairs, and that Respondent Martin remained on the sidewalk. Further, the witnesses agreed that Respondent Green did not enter the residence to capture [REDACTED]

The exact location of Respondent Green was delved into during Pringle's testimony, in which she said she did not see Respondent Green enter the residence. Although Pringle admitted saying in her CCRB interview that [REDACTED] "passed the doorway," she also said in that interview, "I don't think they were inside I think that doorway." The Court accepts this clarification.

Respondent Martin did not see [REDACTED] enter the residence. He saw him at the doorway, and agreed that "at that point and time he was stopped by" Respondent Green. Respondent Martin said that after Respondent Green left the van, the incident occurred "in a matter of seconds." Respondent Martin added, however, that by the time he got out of the van, he was watching Respondent Green come down the stairs with [REDACTED]

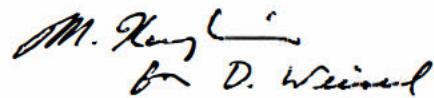
Respondent Green had the most direct interaction with [REDACTED]. Of the three witnesses for his side, Respondent Green had the clearest explanation of what happened. At the time that

Respondent Green got out of the van, he stated that [REDACTED] was about seven feet away and on the second step of the staircase. [REDACTED] got to the top of the stairs and started banging frantically on the door. He also kept grabbing at his waist. Respondent Green stated that when he got to the top of the stairs, a woman came to the door. When she opened the door, [REDACTED] knocked her down. Running into the woman slowed [REDACTED] down, and Respondent Green grabbed him by the waistband. He grabbed [REDACTED] at the doorway, not inside of the house. Respondent Green was standing on the porch and did not "ever have to enter the residence."

The Court credits Respondent Green as having the most detailed and straightforward explanation of events. His recollection that the door was closed is a key detail. If the door was closed, [REDACTED] would have been slowed down and Respondent Green might have been able to catch up. In fact, Veronica Johnson and Shirlene Green stated that the door was only "cracked" or "halfway" open as Shirlene was standing there. This also ties in to an important facet of the credibility determination. Neither witness could explain why Shirlene was standing on the stoop. When asked by counsel for Respondent Green, Johnson replied with indignation: "I don't think she need a particular reason to be out there." When the Court followed up, Johnson stated that she had "no idea what she was doing out there," and that she had not known Shirlene was outside. Shirlene stated that it was "a summer day" (it was October 18th) and she was hanging out. The Court agrees that Shirlene did not need a specific reason to be outside and could stand wherever she wanted. But the fact that neither witness could explain forthrightly why Shirlene was on the stoop, when she was there to visit Johnson, leaves the Court with the conclusion that she was not outside, that Respondent Green accurately stated that the door was closed and [REDACTED] had to bang frantically to get in, that this slowed [REDACTED] down, and that Respondent Green was able to catch him at the threshold of the residence without entering the home.

As parties to the action, the Respondents were interested witnesses. See People v. Agosto, 73 N.Y.2d 963, 967 (1989) (defendant is an interested witness as a matter of law). But there are greater problems with crediting the accounts of the witnesses against the Department. In sum, the Department failed to prove by a preponderance of the evidence that either Respondent "entered the interior" of the residence, an element of the specification against each Respondent. Accordingly, the Court finds the Respondents Not Guilty.

Respectfully submitted,



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